

## REMARKS

1. Applicant thanks the Office for its remarks and observations which have greatly assisted Applicant in responding.

### 2. INFORMATION DISCLOSURE STATEMENT

The March 4th IDS is alleged to be non-compliant with 37 CFR §§ 1.97 and 1.98 and MPEP § 609 because each non-patent literature entry does not have a date. Applicant submits herewith an IDS properly listing the items for which a date was not given in the March 4th IDS. The objection to the IDS is therefore deemed overcome.

### 3. DOUBLE PATENTING

Claims 1-25 are provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over Claims 1-25 of co-pending U.S. patent application ser. no. 10/688,423. Applicant submits herewith a terminal disclaimer for the co-pending Application. The provisional rejection is therefore overcome.

### 4. 35 U.S.C. 103

Claims 1-25 are rejected as being unpatentable over U.S. patent no. 6,502,194 ("Berman") in view of U.S. patent application pub. no. 2001/0030660 ("Zainouline").

Claim 1: in order to describe the subject matter of the Claims more clearly, Claim 1 is amended to describe:

"An apparatus for smoothly playing a pre-determined sequence of songs transmitted from a server over the Internet, the apparatus comprising;

a processor;

a first memory that stores at least one program used by said processor to control the playing of the sequence of songs, said program including computer-readable instructions for specifying number of songs to cache in advance and size of a pre-buffer cache; and

a second memory which is available to said at least one program for operations, wherein said at least one program causes said processor at least to:

as soon as a song starts to play, start to download, consecutively, a first small portion of each of a number of songs which are, in the pre-determined sequence, subsequent to the song in playing, said downloaded small portions being pre-cached in a buffer which is an area in said second memory;

as soon as the user skips to a target song whose first small portion has been pre-cached, start to play the first small portion of said target song; and

at the same time start to download the rest of said target song so that as soon as the playing of the first small portion of said target song ends, start to play the rest of said target song which is being downloaded from the server over the Internet.”

Support for the amendment is found at least at ¶ 0028 of U.S. patent application pub. no. 2006/0155400. There is no teaching or suggestion in the combination Berman/Zainouline of an apparatus such as described in Claim 1 that includes the capability of specifying number of songs to cache in advance and size of a pre-buffer cache. Accordingly, because amended Claim 1 describes subject matter neither taught nor suggested by the combination, Claim 1 is deemed allowable over the combination. In view of their dependence from an allowable parent, Claim 1's dependent Claims are deemed allowable without any separate consideration of their merits.

Claims 6 and 16 are amended in similar fashion to Claim 1 and are allowable for the same reason that amended Claim 1 is allowable. In view of their dependence from allowable parent Claims, Claims depending from Claims 6 or 16 are deemed allowable without any separate consideration of their merits.

5. No new matter is added by way of the above amendments. The above amendments are made only for the sake of expediency, in recognition of the Office policy of compact prosecution. They do not signify agreement by Applicant with the Examiner's position. Nor do they reflect intention to sacrifice claim scope. Applicant expressly reserves the right to pursue patent protection of a scope it reasonably believes it is entitled to in one or more future submissions to the Office.

6. For the record, Applicant respectfully traverses any and all factual assertions in the file that are not supported by documentary evidence. Such include assertions based on findings of inherency, assertions based on official notice, and any other assertions of what is well known or commonly known in the prior art.

### **CONCLUSION**

In view of the foregoing, the claims are deemed to be in allowable condition. Applicant therefore earnestly requests reconsideration and prompt allowance of the claims. Should the Examiner have any questions regarding the Application, he is urged to contact Applicant's attorney at 650-474-8400.

Respectfully submitted,



Michael A. Glenn

Reg. No. 30,176

Customer No. 22862